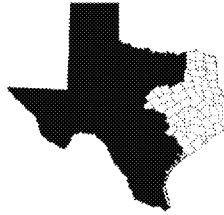


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November 1, 2017

**VIA FIRST CLASS MAIL**

Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Housing and Civil Enforcement Section, NWB  
Washington, D.C. 20530

Garry Sweeney, Regional Director  
U.S. Dept. of Housing and Urban Development  
Southwest Office  
801 Cherry St., Unit 45, Suite 2500  
Fort Worth, TX 76102

Attention: Title VI Program Coordinator  
Federal Highway Administration  
Office of Civil Rights  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
8th Floor E81-105  
Washington, DC 20590  
CivilRights.FHWA@dot.gov

Office for Civil Rights and Civil Liberties  
U.S. Department of Homeland Security  
Building 410, Mail Stop #0190  
Washington, D.C. 20528

Civil Rights Division  
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950 Pennsylvania Avenue, N.W.  
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Office of the Secretary of Defense  
Office of the Deputy Chief Management  
Officer  
Attn: Chief, Defense Privacy and Civil  
Liberties Division  
4800 Mark Center Drive  
ATTN: DPCLTD, Mailbox# 24  
Alexandria, VA 22350-1700

**Re: Complaint under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d**

On behalf of certain current and former residents and property owners of the East End of Freeport ("Complainants"), the undersigned advocates at Lone Star Legal Aid and the Showalter Law Firm submit this Complaint regarding the City of Freeport ("City") and Port Freeport f/k/a the Brazos River Navigation District ("Port Freeport") for the intentional and discriminatory displacement of Freeport's East End's residents in an effort to make way for expanded port facilities at Port Freeport. These three entities have worked together in combination: (1) to deny Complainants proper compensation and relocation accommodations for their property rights under the threat of eminent domain by Port Freeport based on applicable state and federal law, (2) to deprive Complainants' East End neighborhood of essential city services, infrastructure improvements, and the ability to improve their property, and (3) to devalue systematically Complainants' property near Port Freeport in order to make it cheaper for the Port's well-known expansion efforts. Moreover, the ongoing expansion of the Port's maritime, shipping and transport activities has further exposed East End Freeport residents to severe air pollution emissions without mitigation.

Title VI prohibits entities receiving federal financial assistance from engaging in activities that subject individuals to discrimination on the basis of race, color, or national origin. 42 U.S.C. § 2000d. Port Freeport and/or the City of Freeport receive financial assistance from the Department of Defense (DOD), U.S. Department of Transportation (DOT), U.S. Department of Homeland Security (DHS), U.S. Department of Housing and Urban Development (HUD), or other federal agencies. These entities are, therefore, subject to Title VI's prohibition against discrimination. The City and the Port violate that prohibition by forcing through port expansion projects in a discriminatory manner that infringes on Complainants' civil rights.

As an initial step in addressing the violations set forth in this complaint, Complainants request one or more of the federal agencies identified in this complaint, including the Department of Justice (DOJ), DOD, DOT, HUD and DHS (the "Government Agencies"), accept this Complaint, and investigate whether the City and the Port have indeed violated, and/or continue to violate Title VI of the Civil Rights Act and its implementing regulations in its continued unfettered expansion of the Port.<sup>1</sup> In order to remedy the violations set forth in detail below, Complainants further request that the Governmental Agencies condition all future grants and awards of federal funds to the City and the Port on each entity furnishing adequate assurances that their actions with respect to the activities taking place at the Port will address their history of discrimination against the surrounding community. Specifically, Complainants request that the City and the Port implement and adhere to appropriately tailored, mitigation measures that will justly compensate the involuntarily displaced East End Residents; address the harmful externalities of the Port's industrial and shipping activities – including any and all new and expanded activities occurring at the Port; and that the City and the Port commit to a meaningful, continuous process for receiving and incorporating input from the community of the East End of Freeport.

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<sup>1</sup> Complainants also specifically request that if any of the named Governmental Agencies reject this complaint, another named Governmental Agency conduct an investigation alone or jointly with other federal agencies, as appropriate, in accordance with federal regulations. See 28 C.F.R. § 42.408(b) ("Where a federal agency lacks jurisdiction over a complaint, the agency shall, wherever possible, refer the complaint to another federal agency...").

## **I. PARTIES**

### **A. Complainants**

The Complainants are citizens of the City of Freeport and particularly the East End community, whom work tirelessly to resist the continued unfettered conduct of Port Freeport and its deliberate efforts to extinguish the East End community. Many of these families have lived in the East End for generations. These citizens are property owners or heirs with property interests within the East End community. Their real estate holdings in the East End reflect the accumulation of their family wealth over the years, and a commitment to investment in their community. The Complainants are predominantly of African American and Hispanic American heritage. The group is comprised of parents, grand-parents, community members, retirees, teachers, nurses, factory and dock workers, entrepreneurs and the like. Most of the complainants were born and raised in the East End community, most of whom want to stay but are being forced out of their homes by Port Freeport.

### **B. Recipients**

#### **1. Port Freeport**

Port Freeport is located on the southeastern coast of Texas 60 miles south of Houston on the Gulf Intracoastal Waterway in Brazoria County, Texas. The Port was created as a Chapter 62 district under the authority of Article 16, Section 59 of the Texas Constitution on June 6, 1927, for the purpose of making improvements for the navigation of inland and coastal waterways, and for the preservation and conservation of said waterways in aid to navigation. Port Freeport initially established as Brazos River Harbor Navigation District. In 2007, the Texas legislature changed the name to Port Freeport and changed the name of the governing body to “Port Commission”.<sup>2</sup>

Under Texas law, a navigation district has the power and duty: (1) to improve, preserve and conserve inland and coastal water for navigation, (2) to control and distribute storm water and floodwater of rivers and streams in aid of navigation, and (3) to provide for any other purpose necessary or incidental to the navigation of inland or coastal water in aid of these purposes. TEX. WATER CODE § 62.101. Port Freeport’s authority also includes the power of eminent domain to condemn and acquire the right-of-way for all necessary improvements related to these powers. TEX. WATER CODE § 62.105. Because the Port is landlocked by residential communities, its future plans for expansion necessarily requires the displacement of residents of the City of Freeport. As of the date of this Complaint, the Port has not filed any condemnation petitions associated with its recent acquisition of property in the East End Freeport, but it maintains an active registration with the Texas Comptroller’s Office relating to its eminent domain powers.

A locally-elected Port Commission is vested with exclusive control and management of Port Freeport, which contains 186 acres of developed and almost eight thousand acres of undeveloped land. Port Freeport’s six commissioners are each elected to six-year terms by the voters of the navigation district. Every two years two commissioners must run for re-election, as they serve staggered terms. One seat is at large; the others represent 4 different precincts.

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<sup>2</sup> Tex. H.B. 542 (2007).

Port Freeport is also taxing authority receiving the benefit of local property taxes. Port Freeport is a recipient of both state and federal funds, as further detailed below. Over the past 10 years, Port Freeport has applied for more than \$1 billion dollars in federal funding from a variety of federal agencies. The Port has publicly announced that its current plans are for at least 60% of its port expansion efforts to be federally funded. Port Freeport intends to become the largest deep water landlord port on the gulf coast of Texas capable of servicing Panamax cargo ships.



*Aerial view of Port Freeport*

## **2. City of Freeport, Texas**

Chartered in 1912, Freeport is a city in Brazoria County, Texas with a population of approximately 12,049 according to the last census. It is part of the Houston-Sugarland-Baytown Metropolitan Area. The area was settled in 1898 but not officially founded until 1912 by commercial interests wanting to exploit the local sulfur deposits. The City is approximately 12% African American, 26% White, and 60% Hispanic or Latino in origin with an elderly population of approximately 8%. The City operates under a council/manager form of government. There is a mayor and four council members, elected for two-year terms, who set the policies for city infrastructure and any improvements. A city manager is responsible for the general administration of the City on a daily basis. The City of Freeport receives the majority of its revenues from local property taxes, sales taxes, franchise taxes, administrative fees, and community development block grants through Brazoria County, amongst other revenue sources.

## **II. JURISDICTION**

Title VI's prohibition on discrimination applies to all recipients of federal funds. "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. 42 U.S.C. § 2000d.

### **A. Program or Activity**

Title VI defines a "program" or "activity" as "all of the operations of . . . a department, agency, special purpose district, or other instrumentality of a State or of a local government . . . any

part of which is extended Federal financial assistance.” 42 U.S.C. § 2000d-4a. Accordingly, if any part of a listed entity receives federal funds, all of the operations of that entity are covered by Title VI. The actions of each of the recipients named in this complaint qualify as a part of a program or activity of a State or of a local government. Specifically, the actions of the Port are part of a “program” or “activity” because Texas Special Dist. Local Laws Code § 5002.002, *et seq.* identifies the Port as a “special purpose district” pursuant to. 42 U.S.C. § 2000d-4a(1)(A). The actions of the City are likewise part of a program or activity because both the City is a local government entity. 42 U.S.C. § 2000d-4a(1)(A)-(B).

Port Freeport fully expects that Panamax containership traffic will increase in this region. In anticipation, it has undertaken efforts to expand all Port operations to better service this new demand. Additionally, with the discovery of Eagle Ford Shale oil and natural gas, Port Freeport anticipates a significant increase in the growth rates of oil and gas commodities. The Port expects an increased need to facilitate the transportation of these commodities, as well. The Port has a few projects currently underway, including the Freeport Harbor Channel Improvement, Velasco Terminal Berth and Expansion (Phase I and II), Multimodal Industrial Park, Cool Storage Facility Expansion, and new gate additions. As a recipient of federal funding for these projects, Port is required to provide assurances that they are in compliance with Title VI on each and every application for federal funding. 49 C.F.R. §21.7. Also, the National Environmental Policy Act (NEPA) requires an environmental review of federal actions that may affect the environment. 42 U.S.C §4321. Port Freeport is required to ensure that its environmental and project planning process complies with Title VI. 23 C.F.R. § 450.18; 23 C.F.R § 450.334. As a result, the Port’s environmental analysis, its project location decisions, public participation processes, and mitigation determinations for these various port expansion projects are subject to the requirements of Title VI.

## **B. Federal Financing/Federal Financial Assistance**

Both the Port and the City are recipients of Federal financial assistance. Port Freeport is a direct recipient of federal funding from DHS, DOT, and DOD, and the City from both HUD and DHS. The Port has received federal assistance as defined in the implementing regulations for DOD and DOT. The City and the Port receive federal financial assistance as defined in DHS’s Title VI implementing regulations. The City (via Brazoria County) receives federal financial assistance as defined in HUD’s Title VI implementing regulations.

### **1. DOD Funds Received by the Port**

The Port and the City receive federal financial assistance as defined in DOD’s Title VI implementing regulations. DOD regulations define “[r]ecipient” as “any State... or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State... to whom Federal financial assistance is extended, directly or through another recipient...” 32 C.F.R. § 195.2.

The Port is currently undergoing an enormous federally funded infrastructure project, the Freeport Harbor Channel Improvement Project (FHCIP) with approval through the Water Resources Reform & Development Act of 2014 (WRRDA). Pub. L. No. 113-121 (June 10, 2014). This project, funded by the United States Army Corp of Engineers (USACE), will widen and deepen a portion of the channel, including the portion that wraps around and provides access to the Velasco Terminal. It represents the latest in an ongoing series of federally funded harbor improvements and expansions dating back to 1899, when the United States government first assumed responsibility for the harbor. The latest cost estimate for the project is \$342,171,000, and the federal portion of

this total is \$163,023,000. In addition to the initial cost, there will be continued federal spending for the foreseeable future, as the federal government is responsible for operating and maintaining the project after construction. Port Freeport is the non-federal sponsor for the channel improvement project, and has been actively involved in the entire planning process. According to USACE documents, the Port's primary concern throughout this process has been to provide modifications allowing for transit of the Panamax vessel to and from the Velasco Container Terminal.<sup>3</sup> Based on the USACE fiscal budgets, the following funds were allocated to Port Freeport for the last several years for operations and maintenance (O&M):

2013 - \$8,848,000 (\$8,673,000 for maintenance; \$175,000 for operations)  
 2014 - \$8,300,000 (maintenance only)  
 2015 - \$10,600,000 (O&M); \$1,200,000 (preconstruction, engineering & design)  
 2016 - \$5,800,000 (maintenance only)  
 2017 - \$8,300,000 (maintenance only)  
 2018 - \$5,600,000 (\$5,200,000 for maintenance; \$400,000 for operations)

Thus, the total amount of federal funds allocated in the USACE budgets for the last 6 years to Port Freeport exceeds \$48,648,000.

## 2. DOT Funds Sought by the Port

The Port has sought, and has announced their intention to seek, federal financial assistance as defined in DOT's Title VI implementing regulations. Like DOD, DOT regulations define "[r]ecipient" as "any State . . . or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State . . . to whom Federal financial assistance is extended, directly or through another recipient. . . ." 49 C.F.R. § 21.23.

According to minute orders of the Texas Department of Transportation (TxDOT), Port Freeport has received the following federal funds from DOT through the TxDOT for various federal maritime activities:

	<b>Port Funding</b>	<b>Port Access Account Funding</b>	<b>Total Funding</b>
FY 2010	\$15,447,000	\$15,447,000	\$30,894,000
FY 2011	\$8,415,500	\$8,415,500	\$8,415,500
FY 2013	\$2,478,700	\$2,478,700	\$4,957,400

Port Freeport has also applied for, but not received, federal funding through DOT's Transportation Investment Generating Economic Recovery (TIGER) grant program on two occasions. In 2009, Port Freeport applied for a TIGER grant of \$43,900,000 for the Port Freeport Rail System, and in 2015, Port Freeport applied for a TIGER grant of \$70,740,000 for the Port Freeport Multimodal Logistics Park.<sup>4</sup>

<sup>3</sup> Draft Integrated General Reevaluation Report Environmental Assessment, ES-14.

<sup>4</sup> See TIGER Application List 2009 – 2015, Available at [https://www.transportation.gov/sites/dot.gov/files/docs/TIGER\\_ApplicationListing\\_2009-2015.pdf](https://www.transportation.gov/sites/dot.gov/files/docs/TIGER_ApplicationListing_2009-2015.pdf) (accessed 7/25/2017)

Importantly, Port Freeport has repeatedly announced their intention to seek federal funding for the Velasco Terminal expansion at the center of this complaint and expects 50% to 75% federal funding for the expansion. While the Port has not publicly revealed which funds they intend to pursue, a TIGER grant is a highly likely option. The TIGER program is consistent with the stated aims of the Port's expansion project, and the Port targets that 75% of its funding needs over the next few years will come from Federal grant programs.<sup>5</sup>

### **3. DHS Funds Received by the Port and City**

The Port and the City receive federal financial assistance as defined in DHS's Title VI implementing regulations. DHS regulations define "[r]ecipient" as "any State... or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State... to whom Federal financial assistance is extended, directly or through another recipient..." 6 C.F.R. § 21.5.

The Port regularly receives sizable grants from DHS as part of the Federal Emergency Management Agency's Port Security Grants Program. While these grants are not directly implicated in the Port's actions in the East End, they further demonstrate a significant and sustained investment of federal funds in port infrastructure and operations. The following is a list of DHS funds received by the Port from FY 2008 to FY 2016:

2008 - \$3,070,024  
2009 - \$3,410,916  
2009 - \$1,940,032  
2011 - \$1,318,160  
2013 - \$308,045  
2014 - \$373,768  
2015 - \$215,250  
2016 - \$791,588

The City of Freeport is also a recipient of federal funds from DHS. In 2014, the City received a grant of \$743,475 through the Federal Emergency Management Agency's Port Security Grants Program.

### **4. HUD Funds Received by City of Freeport**

HUD regulations define "recipient" as "any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program or activity..." 24 C.F.R. § 1.2.

Brazoria County regularly receives federal funding from HUD through multiple programs, including Community Development Block Grants/Entitlement Grants, Emergency Solutions Grants (Homeless Assistance Grants), and the Home Investment Partnerships Program.

The following is a list of HUD funds received by Brazoria County from FY 2008 to FY 2016:

2008 - \$2,198,719  
2009 - \$3,525,440

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<sup>5</sup> Port Freeport, Proposed Port Capital Expansion Plan, FY 2017 to FY 2022 at 11 and 13.

2010 - \$2,742,751  
2011 - \$2,363,645  
2012 - \$2,202,692  
2013 - \$2,125,682  
2014 - \$2,112,415  
2015 - \$2,121,874  
2016 - \$2,132,159

### **C. Timeliness**

This complaint is timely because it is based on the Port and City planned Velasco Terminal expansion. DOD, DOT, DHS, and HUD regulations all specify that a complaint must be filed within 180 days of the alleged discriminatory act. 30 C.F.R. § 195.8(b) (DOD); 6 C.F.R. § 21.11(b) (DHS), 49 C.F.R. § 21.11(b) (DOT), 24 C.F.R. § 1.7(b) (HUD). DOD, DHS, DOT, and HUD each have the authority and discretion to extend or waive the deadline. *Id.*

At almost every meeting of the Port Commissioners held in the last 2 years, the Port Commission has gone into executive session to discuss the “potential exchange, lease, or value of real property located in Freeport, Texas, including but not limited to the area known as the East End of Freeport and bordered by or adjacent to the following streets: FM 1495, East 2<sup>nd</sup> St., Terminal St., and East 8<sup>th</sup> St. in Freeport, Texas.” While these “executive session” discussions are not part of the public record, it is safe to assume given the frequency of these deliberations that the Port has been on an active campaign to obtain possession of the property in the East End of Freeport. This conspicuous veil of secrecy speaks volumes and casts doubt on the commission’s efficacy and fundamental integrity. Consequently, each of these transactions should be subject to scrutiny for the violations outlined in this letter. To the extent that these closed-session portions of otherwise required public meetings provided the opportunity for the Port to conspire about how to go about acquiring property in the East End illegally, these executive sessions should be reviewed further. To understand the number of transactions potentially subject to such review, in the last two years alone the Port has acquired over fifty properties in the East End of Freeport. The City transferred at least two of these properties to the Port within the two-year period and a total of eight properties since 2005.

On March 23, 2017, Port Freeport approved a housing construction contract with Tegrity Homes for a “New Housing Project 2017” in an amount not to exceed \$2,927,500.00. Under Section 60.032 of the Texas Water Code governing navigation districts, Port Freeport has the authority to construction improvements, such as turning, storage, or yacht basins, harbors or any facilities, which may, in the judgment of the commission, be necessary or useful in the development and utilization of a waterway project for navigation purposes or in aid of navigation purposes. TEX. WATER CODE § 60.032. Such authority does not include the ability of Port Freeport to contract for the construction of residential housing. Actions to annul or invalidate acts taken in violation of the navigation district’s authority can be brought timely within a 2-year period from the challenged act. TEX. WATER CODE § 60.004(a). Moreover, this time limitation does not apply to acts that were void at the time they occurred. TEX. WATER CODE § 60.004(b)(1).

This complaint is timely because it is filed with 180 days of the actions described above. Furthermore, because violations alleged in this complaint are part of a sustained, ongoing campaign of intentional discriminatory actions, and because these actions are highly likely to continue into the future until the Port has completed its stated goal of acquiring all of the remaining properties in the East End, we request that DOD, DOT, DHS, and HUD extend the 180-day deadline, if warranted.



30 C.F.R. § 195.8(b) (DOD); 6 C.F.R. § 21.11(b) (DHS), 49 C.F.R. § 21.11(b) (DOT), 24 C.F.R. § 1.7(b) (HUD).

#### **D. Other Prudential Factors and/or Jurisdictional Considerations**

This Complaint satisfies all other jurisdictional and prudential considerations laid out in DOD, DOT, DHS, and HUD regulations implementing Title VI. Specifically, this Complaint is submitted to each agency in writing, by and on behalf of a Complainant group that is authorized to submit such a complaint to redress the adverse impacts these Complainants experience directly, and which other Freeport residents do not experience as a result of both the Port's and the City's violations of Title VI.

DOD, DOT, DHS, and HUD have subject matter jurisdiction over this Complaint because it alleges discrimination based on race in violation of Title VI of the Civil Rights Act of 1964. This Complaint also contains unique civil rights allegations that have not been alleged in any court or administrative proceeding, and which are specific to the City's and the Port's pattern of discrimination in aggressively acquiring property in the East End for the Velasco Terminal Expansion and other Port projects.

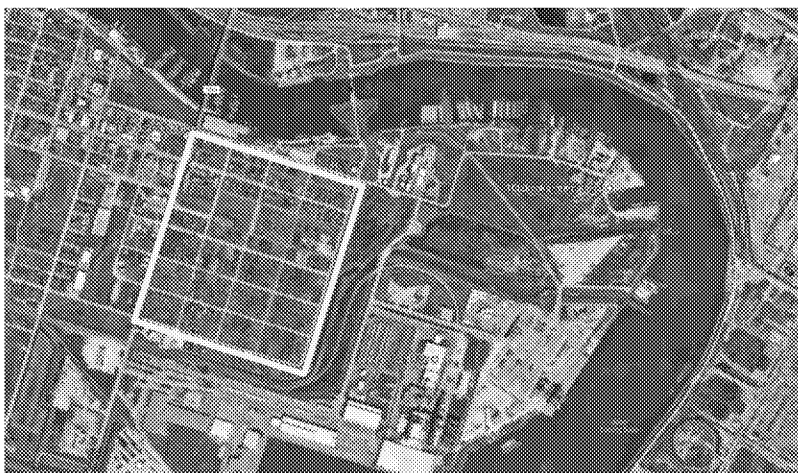
Moreover, this Complaint seeks unique relief from DOD, DOT, DHS, and HUD — compliance with Title VI. Complainant asks DOD, DOT, DHS, and HUD to investigate this Complaint and take steps to remedy noncompliance with Title VI by the Port and the City, including conditioning any and all future federal funding on strict compliance. This relief is not available through other means.

### **III. FACTUAL BACKGROUND**

#### **A. The Residents and Community of Freeport's East End**

##### **1. Freeport's History and Demographics of the East End**

The "East End" of Freeport is a known, identifiable area in Freeport, Texas bounded by Terminal St., 8<sup>th</sup> St., East Park, and 2<sup>nd</sup> St. whose approximate location is illustrated by the yellow outline on the map below.<sup>6</sup>



*Freeport's East End*

<sup>6</sup> City of Freeport, April 25, 2017 Response to Open Records Request dated April 7, 2017, at 2.

As of the 2010 census, the East End of Freeport comprised a small community of approximately 356 residents.<sup>7</sup> Eighty-seven percent of the population identified as minorities – predominately Hispanic (71%) or African American (15%).<sup>8</sup> Population by age registered at 15% of the population as over 65 years old.<sup>9</sup> It is estimated that up to 48% of the families in this neighborhood do not speak English at home.<sup>10</sup> Not only is this small community largely made up of people of color, but also this population would also trigger limited English proficiency requirements for any notices provided to residents. The East End of Freeport's roots in segregation run deep, and it is not a coincidence that a large majority of Freeport's total African American community once was concentrated in the East End.

Freeport, on the Missouri Pacific railroad tracks some sixteen miles south of Angleton in southern Brazoria County, is a deepwater port three miles from the mouth of the Brazos River on the Gulf of Mexico. The community's post office has been in continuous operation since 1898, but the town itself was officially founded by the Freeport Sulphur Company and formally dedicated in November 1912. Freeport was at the site of some of the world's largest sulfur mines and was the home of the Houston and Brazos Valley Railway.

On the heels of President Lincoln's death, passage of the 13<sup>th</sup> and 14<sup>th</sup> Amendment, and its resulting southern backlash, the next 60 years of federally authorized segregation sets the backdrop for the birth of the community now known as the "East End" of Freeport.

In the late 1920s, cities across the nation engaged in a concerted effort to cleanse themselves of African Americans. Historian, Margaret Ferguson wrote that "[t]here was a great deal of animosity toward the well-established Negro who owned his own house and had a job".<sup>11</sup> The City of Freeport was no different.

Brazoria County was widely known for its White Men's Union or White Men's Primary associations.<sup>12</sup> These organizations formed to precipitate the white political candidates defeat of black candidates. The tactics of the White Men's Unions typically involved voter and candidate intimidation and the rigging of elections. Such organizations created a stranglehold on local politics and assured that Black voters had no voice in elections or other local political matters.<sup>13</sup>

Back in October 1930, the Freeport city council under Mayor R.D. Collins convened to pass a segregation ordinance defining a "negro district" in Freeport. This negro district, also referred to as a "negro reservation", is the area today referred to as the East End.<sup>14</sup> The East End was situated downwind of the sulphur and petro-chemical processing facilities at the foot of the hurricane-prone Gulf of Mexico and in the shadow of Port Freeport. The ordinance set forth that it shall be unlawful for any Negro to reside, maintain, erect or establish residence or business outside of the East End community unless they were *bona fide* servants living at the rear of their employer's property

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<sup>7</sup> 2010 Census.

<sup>8</sup> 2010 Census.

<sup>9</sup> 2010 Census.

<sup>10</sup> ACS Summary, 2010-2014 Estimates.

<sup>11</sup> A Hidden Dimension of American Racism, James W. Loewen (2005).

<sup>12</sup> Herrera, John J. [Letter from John J. Herrera to LULAC members - 1951-12-27], letter, December 27, 1951; (texashistory.unt.edu/ark:/67531/metapht250203/:accessed June 14, 2017), University of North Texas Libraries, The Portal to Texas History, texashistory.unt.edu; crediting Houston Metropolitan Research Center at Houston Public Library.

<sup>13</sup> *Handbook of Texas Online*, Christopher Long, "White Man's Union Associations," accessed June 14, 2017.

<sup>14</sup> Freeport Ordinance (October 23, 1930).

elsewhere. After oral and written protests from Freeport's white community against African Americans living in the white section of town, claiming that their presence in certain areas created a nuisance, the City Council voted again two years later to rigidly enforce its 1930 ordinance, without exceptions, instructing the City Marshall to notify property owners that only actual servants would be allowed to live on their premises. For all other African Americans in Freeport, they would be required to relocate to the East End.

Despite the history of intense segregation, the East End community flourished over the years. By the end of the next decade, the area was served by its own school for black students.<sup>15</sup> The thriving community became home to many black-owned businesses, prosperous churches, restaurants and many vibrant hardworking families. Nevertheless, port expansion, racial discrimination, and industrialization would slowly destroy the foundation of the East End community and its citizenry. In the past several years, the East End has lost all of its businesses in the area, including a grocery store, a furniture store, and a carpet store, as the neighborhood began to fade away because of the demolition of homes as the Port acquired East End properties in the residentially zoned area. The East End community has also been stripped of its churches, which deprives the residents of community centers there. The Port's 2006 acquisition of the New Jerusalem Baptist Church on E. 7<sup>th</sup> St., whose congregation had worshiped in the area since 1944, signaled the beginning of the end of a viable East End community. The church relocated to a new building on Skinner St. in February 2007 in a different area of town.

Racial attitudes for generations remained pervasive and unrelenting in Texas, Freeport, and the East End. The forced isolation of segregation resulted in significant socio-economic impacts. The "legal" race-based restrictions produced de-facto demarcation lines in Freeport which were the hallmark of Jim Crow society. The Jim Crow mind-set infected all facets of society from politicians, to teachers, policing, unions and media. This paradigm persisted for much of the twentieth century and sets the backdrop for the continued deliberate civil rights violations being exacted on the East End community by the City of Freeport and Port Freeport.

## **2. Health and Pollution Burdens Affecting the East End**

### **a. The East End continues to disproportionately endure the effects of the Petrochemical industry.**

Freeport has been a company town since its founding. Its name came from the Freeport Sulphur Company, a mining concern that operated the largest sulfur mine in the world in the early 1900's. Freeport's industry began to expand with Dow Chemical's arrival in 1940. Dow initially sought to mine magnesium for the war effort, and, in cooperation with Defense Plant Corporation, built "Camp Chemical", a 12,000 person city devoted to housing the influx of Dow workers. Camp Chemical was torn down a few years later, as the Dow family moved ahead with construction of the more permanent City of Lake Jackson several miles away, where many Dow employees continue to live.

Today, the Dow Chemical complex remains the center of the region's economy. With some 1,900 buildings covering over 7,000 acres on four plants in and around Freeport, the Dow Chemical complex is the largest integrated chemical manufacturing site in the world. The oldest of these plants, known as Dow Plant A, is less than one mile from the East End.

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<sup>15</sup> Handbook of Texas Online, Diana J. Kleiner, "Freeport, TX (Brazoria County)," accessed June 14, 2017, <http://www.tshaonline.org/handbook/online/articles/hef03>.

Freeport is dominated by the chemical and petroleum industries. The East End in particular is surrounded on three sides by a dizzying collection of chemical plants. Smoke stacks, flares, pipelines, and storage tanks are visible in almost any direction. The following is a list of the twenty petrochemical-related facilities that encircle the East End:

- **S. F. Sulfur Corp.**, a sulfur processing plant, less than 0.2 miles from the nearest East End residence;
- **Gladieux Metals Recycling**, formerly **Gulf Chemical and Metallurgical**, a spent catalyst recycling facility with a sordid history of criminal environmental violations.<sup>16</sup> 0.5 miles north;
- **Philips 66 Freeport Liquefied Petroleum Gas Export Terminal**, a newer facility that liquefies petroleum gas and loads it onto ships for transport. 0.6 miles to the south;
- **NALCO Champion**, a petrochemical manufacturing plant. 0.8 miles north;
- **Dow Plant A**, the oldest part of the Dow Chemical complex. 1 mile east;
- **Freeport Liquefied Natural Gas Export Terminal**, an enormous facility currently under construction that will liquefy for transport 20 million tons per year of natural gas. 1.5 miles southeast;
- **Huntsman Ethyleneamines Plant**, a petrochemical manufacturing facility. 1.7 miles east;
- **SI Group**, a petrochemical and plastics manufacturing facility. 1.7 miles north;
- **Dow Oyster Creek**, a large section of the Dow Chemical complex. 1.9 miles north;
- **Mineral Research & Development**, a manufacturer of inorganic, metallic salts. 2.2 miles north;
- **Bryan Strategic Petroleum Reserve**, 2.5 miles to the southwest;
- **Braskem Oyster Creek Unit**, a chemical and plastics manufacturing complex. 2.5 miles north;
- **Air Liquide Freeport HPU Plant**, an industrial gas manufacturing facility. 2.7 miles north;
- **Vencorex Chemicals**, a chemical manufacturing facility. 3 miles northwest;
- **Shintech**, a chemical and plastics manufacturing facility, and the largest producer of polyvinyl chloride in the country. 3.1 miles north;

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<sup>16</sup> Priscila Mosqueda and Forrest Wilder, "Taking on Gulf Chemical in Freeport", Texas Observer (October 18, 2012). <https://www.texasobserver.org/taking-on-gulf-chemical-in-freeport-texas/>

- **Shin-etsu Silicones of America**, a chemical manufacturing plant. 3.1 miles north;
- **Olin Blue Cube, Inc.**, a petrochemical manufacturing facility. 3.4 miles northwest;
- **Dow Plant B**, another large section of the Dow Chemical complex. 3.5 miles northwest;
- **BASF Corp**, a sprawling chemical complex second in size only to DOW, with 25 separate plants on 575 acres, responsible for the release of 2,476,211 pounds of toxic chemicals per year into the land and water around Freeport. 4.5 miles northwest;
- **Seaway Jones Creek Crude Oil Terminal and Tank Farm**. 5 miles west; and
- **Dow Salt Dome**, 6.5 miles north.

The number and size of the facilities on this list demonstrates that the East End is exceptionally burdened, even compared to other communities on the Texas gulf coast, where petrochemical industry encroachment on residential areas is commonplace. All but three of the listed facilities regularly release toxic chemicals into the air, water and land. They also release large volumes of criteria pollutants and hazardous air pollutants. Many of these pollutants are known or suspected to cause cancer, serious respiratory and cardiac diseases, and other serious health effects, such as reproductive effects and birth defects, in addition to adverse environmental effects. Despite this extreme concentration of industrial pollution sources, Texas Commission on Environmental Quality (TCEQ), the state agency tasked with environmental protection, has only a single air monitor in Freeport, and that monitor measures only Sulfur Dioxide. There is no monitoring for hazardous air pollutants, including cancer-causing chemicals like benzene and 1,3-butadiene, which many of these facilities emit on a regular basis.

For example, Dow Chemical's Freeport Operations, approximately 1 mile from the East End, released almost 1.3 million pounds of pollutants in 2015. The plant also emitted 15,717 pounds of benzene, a carcinogen, during malfunctions and maintenance, more than any other facility in the state. During a malfunction on February 2, 2015, the facility released 1,407 pounds of benzene over a 13 hour period, even though its state permit allows no more than 339 pounds. On July 3, 2017, the same Dow facility reported a planned emission related to the initial commissioning of its Light Hydrocarbon 9 Plant that it projects will result in the release of an estimated 82,900 pounds of contaminants, including 800 pounds of benzene, 500 pounds of butane, 600 pounds of 1,3-butadiene, 38,000 pounds of carbon monoxide, 21,000 pounds of Nitrogen Oxide (NOx), and 20,000 pounds of ethylene.

Living in the East End entails regular exposure to unmeasured quantities of air and water pollution. Unidentified chemicals floating on the water are not an unusual sight, and the chemical releases are sometimes so concentrated that they erode docks and boats. Air pollution is even more pervasive, and residents are regularly exposed to noxious smells and air that burns their eyes and irritates their throat and lungs. While the economic benefits of the petrochemical industry ripple throughout the state, the community members of the East End pay for it with their health and quality of life.

#### **b. Port Freeport's unwavering quest continues to wreak havoc on the East End Community**

In addition to the petrochemical presence, East Enders must also contend with their next door neighbor, the Port. The Port's extensive operations disproportionately burden the East End community in the form of air pollution, light pollution, noise pollution, traffic, and other nuisance conditions.

A vast majority of Port Freeport's operations take place in and around the inner harbor, directly adjacent to the East End. The inner harbor wraps around the East End, bordering it to the south and to the east. A number of companies move high volumes of cargo through this terminal, including Dole, Chiquita, Tenaris, Mediterranean Shipping Company, Vulcan Materials Company, American Rice Inc., Horizon Terminals Freeport, Hoegh Autoliners, and Mammoet. Additionally, BASF Corp and ConocoPhillips have their terminals just across the harbor, while Dow, Seaway Crude, and Freeport LNG each have terminals roughly 1.5 miles from the East End. Altogether, the Port handled over three million tons of cargo in 2016, including petrochemical products as well as clothing, fresh fruits and vegetables, rice, paper goods, project cargo, plastic resins, aggregate, autos, and windmill components. 2016 saw over 18,000 TEUs of cargo imported and over 16,000 TEUs of cargo exported.

Every stage of this transport to, through, and from the Port, generates air pollution in the form of diesel exhaust. Cargo arrives and departs on enormous boats powered by multiple diesel engines. Many of the large cranes, vehicles and machines involved in loading and unloading of cargo are likewise powered by diesel engines. Inland, while some of the petrochemicals travel by pipeline, much of the cargo moves by rail or by truck, again powered by diesel engines. Diesel engine exhaust carries a number of hazardous air pollutants, including particulate matter, which is a known carcinogen and can cause and/or contribute to a variety of respiratory and cardiovascular diseases. Particulate matter aggravates the lungs and can trigger asthma attacks and heart attacks, and can even result in premature death. The elderly are especially vulnerable to its effects. Diesel exhaust also contains nitrogen oxides, another potent lung irritant that can worsen existing respiratory issues and trigger asthma attacks.

Because all of this activity takes place in their backyards, residents of the East End are regularly exposed to elevated levels of transportation-related air pollution. Rail lines abut the eastern and southern boundaries of the neighborhood, and a rail yard 16 lanes wide lies just across the harbor to the north, a quarter of a mile from the nearest residence. High volumes of rail traffic expose East End residents to significant amounts of diesel engine exhaust. Much like rail, heavy truck traffic also brings dangerous air pollution in the form of diesel exhaust. The problem is exacerbated by the fact that trucks are less fuel-efficient than trains, much greater in number, and travel closer to, and even within the East End. Heavy trucks have also damaged local streets in the neighborhood, a sore point between residents, the City, and the Port. And though the City has made some attempts to limit industrial traffic on some of the East End streets, trucks remain a constant source of pollution.

This ship, rail, and truck traffic, as well as port operations, also burden the East End residents with significant amounts of noise pollution. The most dramatic sources of noise are the constant rail traffic on three sides of the neighborhood, and the trucks that continue to drive right through the heart of the East End on residential streets. The rumbling of trains and trucks regularly disturbs the leisure time and sleep of residents. Excessive noise exposure to people living in areas around industry has been linked a variety of health effects, including negative impacts to sleep, blood pressure, digestion, and stress. Sleep disruption is common and carries a host of side effects, such as increased fatigue, depressed mood, and decreased performance. Children are especially vulnerable to noise, and it can affect their cognitive abilities, with negative effects on reading,

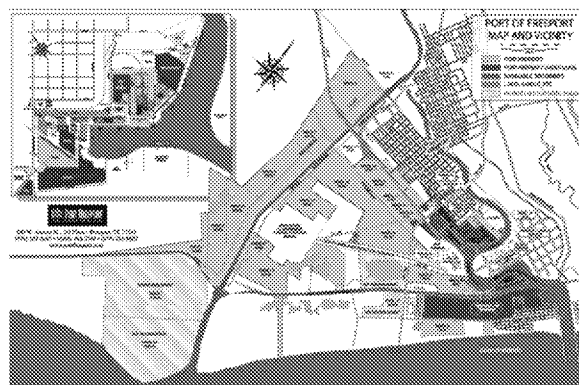
attention, problem solving, and memory. Here again, the East End community is disproportionately burdened by port activities. Unfortunately, those burdens are only likely to intensify in coming years.

The Port has been growing continually for more than a decade, and is excited about the dramatic expansion it proposes in the future. Current plans call for a potential ten-fold increase in capacity to as much as 1,000,000 TEU per year. Transporting this cargo will require expansions of the state highway and rail systems, as well as deepening of the harbor channel, planning for which has already begun. The pollution burden of this activity will again fall on the already overburdened East End community.

## **B. History of the Port**

Port Freeport is a major deepwater seaport in Freeport, Texas. The Freeport Harbor Channel that provides access to the Port is 400-feet wide and 45-feet deep, giving the Port the capability of handling large vessels. Three thousand vessels call at Port Freeport each year from trading partners elsewhere in the United States, Central America, Nigeria, Saudi Arabia, South Africa, Brazil, Columbia, the Dominican Republic, Guatemala, Honduras, Mexico, Venezuela and Costa Rica. The principal imports of the Port are crude petroleum, fruit, textiles, aggregate, paper goods, chemicals and plastics. The primary exported commodities in the Port of Freeport include automobiles, chemicals, clothing, food, paper goods and plastics. Trade moving through Port Freeport represents an annual economic impact of \$46.2 billion dollars per year and is currently ranked 26th out of 300+ ports serving the United States. Convenient to rail, highway, and water routes, Port Freeport offers 14 public and private berths with a 70-foot draft.

Port Freeport is Texas' second largest destination for containerized cargo. Three miles from deep water, it offers abundant container storage space and parcels of land for specialized container operations. The port operates as a landlord port. That is, the Port owns the wharves, which it then rents or leases to a terminal operator, usually a stevedoring company. Likewise, the operator invests in cargo-handling equipment (such as forklifts and cranes), hires dockworkers to operate such lift machinery, and negotiates contracts with ocean carriers to handle the unloading and loading of ship cargoes. Port Freeport handles about 75 thousand TEUs<sup>17</sup> of containerized cargo each year and about 33 million tons of cargo. Port Freeport also contains a climate-controlled facility.



*Port Freeport's Expansion Plans*

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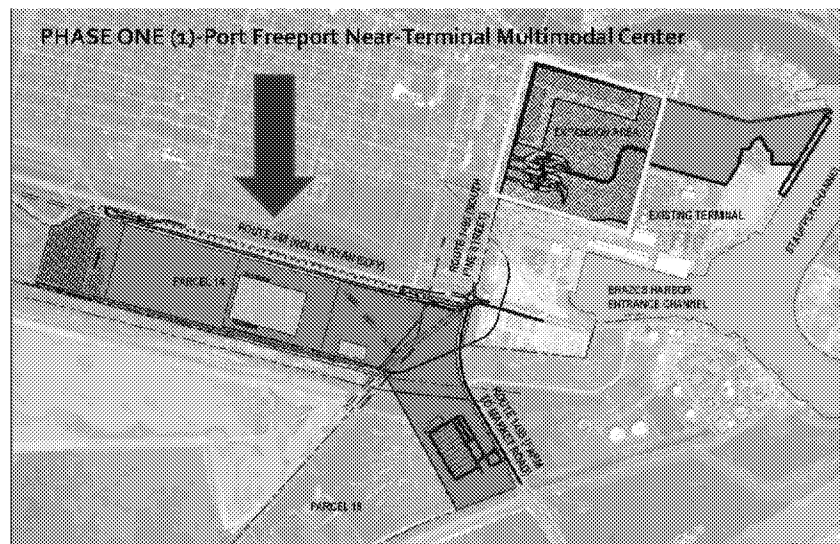
<sup>17</sup> TEU means Twenty Foot Equivalent Unit.

### C. The Expansion of Port Freeport

For over 10 years, Port Freeport has planned a phased expansion of its facilities in compliment to the ongoing Freeport Harbor Channel Improvement Project (FHCIP), which is currently undergoing partial National Environmental Policy Act (NEPA) review. Under the FHCIP, the entrance to the harbor channel and jetty will be deepened from 45 feet to 55 feet under a USACE-approved general reevaluation and review. Further, the same FHCIP will also increase the depth alongside Berth 7 of the Velasco Container Terminal from 45 to 50 feet of water.

Based on its website and public presentations made in the last few years, Port Freeport plans to have a 1300-acre multi-modal facility, two multi-purpose berths with 50-foot draft, and two 120-thousand foot transit sheds at the docks. In a January 2015 presentation to the Technical Advisory Committee of Houston-Galveston Area Council (H-GAC), Mike Wilson, representing the Port, stated that 22% of \$29.6 million in ad valorem taxes collected by the Port will be spent on its expansion projects. Moreover, at least three companies, Dow Chemical, Phillips 66, and Chevron, contributed \$300 million each towards the expansion with the understood expectation that they will then lease land from the Port to support their oil and gas operations.

Phase 1 of the expansion of the Velasco Terminal includes a “Near-Terminal Multimodal Center” to create incremental terminal capacity on Parcels 14 and 19 in the existing port. Phase 1 of the back land development provided 90 acres available for container operations with two new container cranes plus plans for an additional 5 Post-Panamax Gantry Cranes to expedite the cargo operations for the larger ships that will be arriving. This area is estimated to have a capacity of 800,000 TEUs annually. A 2015 slide presented to H-GAC shows an “Expansion Area” (which is the present-day East End outlined in yellow here) with another 150 acres for terminal space.



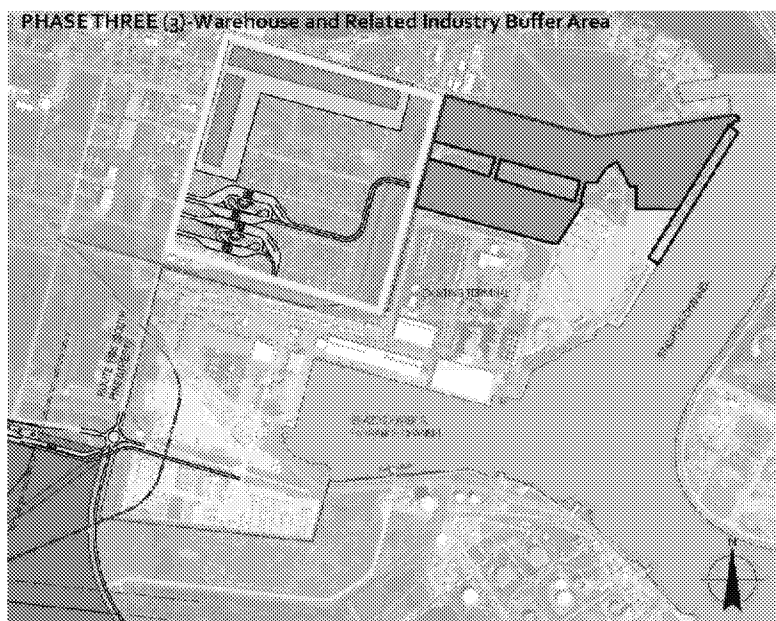
*Port Freeport's Phase One Expansion Plans*

Other draft plans circulated by the Port dated February 26, 2016 also show the planned expansion over the East End outlined in yellow below.





The final phase of the Velasco Container Terminal expansion is to develop and additional 130 acres of back land in order to achieve 1.5-2.0 million TEUs per year. Again, the new expansion includes the existing “East End” of Freeport outlined in yellow.



*Port Freeport's Phase Three Expansion Plans*

The Port has moved quickly on these expansion efforts believing “time is of the essence with the Panama Canal expansion which was completed in 2016.” The Port has publicly stated in presentations regarding FHCIP that “the longer it takes to complete the project, the more it’s going to cost.”<sup>18</sup> Port Freeport has been lobbying Governor Abbott to have the FHCIP designated as a high priority infrastructure project so that it can take advantage of an expedited environmental review process outlined by President Trump in an executive order earlier this year.<sup>19</sup> In the last three years, the Port has also specifically budgeted for over \$10,650,000 for its additional land acquisitions for the Velasco Terminal Expansion: \$4,650,000 in 2016, \$2,500,000 million in 2017, and \$3,500,000 projected for 2018.<sup>20</sup> In preparing the project descriptions related to the Port Capital Expansion Plan supporting the 2016/2017 Fiscal Year Budget, the Port has indicated that the funds earmarked for land acquisition are to be spent to purchase property in the East End of Freeport for the Velasco Terminal Entrance.<sup>21</sup> In other words, the Port will target the funds to acquire the property in the “Expansion Area” shown in the illustrations above. Specifically, the Port has expressly identified the areas it intends to acquire in other presentations:<sup>22</sup>

<sup>18</sup> See Port Freeport Presentation dated August 23, 2012 from Civil Works Review Board (CWRB) Briefing in Washington, DC (Slide 69).

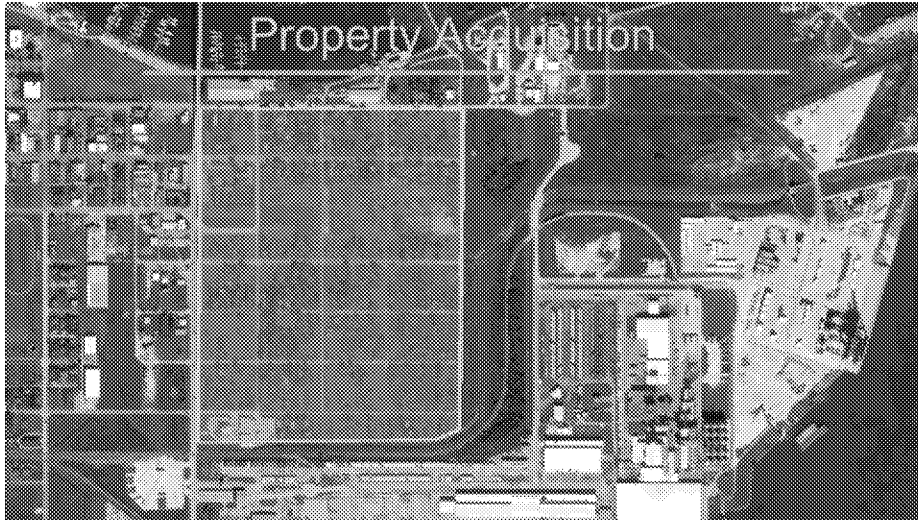
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<sup>19</sup> Port Freeport Meeting Minutes, January 26, 2017.

<sup>20</sup> Port Freeport, Proposed Port Capital Expansion Plan, FY 2017 to 2022 at 10.

<sup>21</sup> Port Freeport, Proposed Port Capital Expansion Plan, FY 2017 to FY 2022 at 14.

<sup>22</sup> Port Freeport Presentation by Jason Hull, Director of Engineering, dated 10-27-2016, to Western Dredging Association (WEDA) in November 2016 (slide 7).



*Port Freeport's Planned Property Acquisition is the East End of Freeport*

In addition to the phased expansion of the Port, the Port and Brazoria County have planned several roadway improvement projects in the immediate area, including the expansion of State Highway 36 to four lanes from US Highway 59 to farm-to-market road (FM) 1495 in Freeport planned for letting in fiscal year (FY) 2018. The Texas Department of Transportation (TxDOT) also proposes to replace the FM 1495 bridge through the East End of Freeport and approaches over the Freeport Harbor Channel and construct a bridge on State Highway 332 over FM 1495, both to let by FY 2018. Because TxDOT's funding of the FM 1495 bridge has been uncertain, in 2016, the Port proposed partnering with the City to work with TxDOT and local industry to guide that project.<sup>23</sup> Another TxDOT proposed project letting in 2018 includes the replacement of the concrete pavement on State Highway 288 that started in early 2017. Moreover, the Port has been the express beneficiary of certain City-financed road projects in the East End that specifically service the truck traffic to the Port. The Port Budget for 2016-2017 identified \$400,000 in road repairs paid to the City of Freeport by Port Freeport).<sup>24</sup>

Finally, in August 2017, the Port broke ground on phase 1 of the Parcel 14 Rail Expansion Project, which consists of a 250-acre site adjacent to State Highway 36 to be developed into a multimodal industrial park with new warehousing facilities for plastic resins packaging, cross-docking activities and distribution centers. As part of the rail expansion, a total 21,000 linear feet of track will be constructed including a 6,000-foot lead track connecting to the Union Pacific main at Cherry St., crossing SH 36, and then connecting to three ladder tracks of approximately 5,000 feet each. It is projected that the new rail infrastructure will be fully operational by July 2018.

#### **IV. LEGAL BACKGROUND**

##### **A. Uniform Relocation Act Applies to the Displacement of Freeport East Enders**

The planned Port expansion project is displacing the residents of the East End of Freeport. Under the Uniform Relocation Act (URA), the phrase "program or project" is defined in 49 CFR Part 24 as, "any activity or series of activities undertaken by a federal agency or with federal financial assistance received or anticipated in any phase of an undertaking in accordance with the federal

<sup>23</sup> Port Freeport Meeting Minutes, January 14, 2016.

<sup>24</sup> September 1, 2016 Budget Transmittal to the Members of the Port Commission at 3.

funding agency guidelines". 42 C.F.R. § 24. Generally, a displaced person under the URA is an individual, family, partnership, association, corporation, or organization, which moves from their home, business, or farm, or moves their personal property, as a direct result of acquisition, demolition or rehabilitation for a federally funded project. 42 U.S.C. § 4601(6)(A). Displaced persons are eligible for relocation assistance under the URA. Even willing sellers are considered displaced persons under the URA. Pub. L. 111-8, div. E. title I, Mar. 11, 2009, 123 Stat. 710.

In 1970, Congress made findings and declared, in pertinent part, that:

- (1) displacement as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance is caused by a number of activities, including rehabilitation, demolition, code enforcement, and acquisition;
- (2) relocation assistance policies must provide for fair, uniform, and equitable treatment of all affected persons;
- (3) the displacement of businesses often results in their closure; and
- (4) minimizing the adverse impact of displacement is essential to maintaining the economic and social well-being of communities.

42 U.S.C. § 4621(a). Chapter 61 of Title 42 of the United States Code establishes a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance. 42 U.S.C. § 4621(b). Congress acted to make sure that such persons shall not suffer disproportionate injuries as a result of the programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on such persons. *Id.*

Under Section 4630 of Title 42, the Federal government shall not approve any grant to, or contract or agreement with, a displacing agency, under which Federal financial assistance will be able to pay all or part of the cost of any program or project which will result in the displacement unless there are satisfactory assurances from the displacing agency that:

- (1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, such as moving and related expenses as are required to be provided by a Federal agency under sections 4622 (moving and related expenses), 4623 (replacement housing for homeowners and mortgage insurance), and 4624 (replacement housing for tenants) of this title;
- (2) relocation assistance programs offering the services described in section 4625 of this title, namely relocation planning, assistance coordination, and advisory services, shall be provided to such displaced persons;
- (3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with section 4625(c)(3) of this title.

42 U.S.C. § 4630 (parenthetical examples added).

In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion on the courts, to assure consistent treatment for owners in the many Federal programs and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent possible, be guided by the following practices, in pertinent part:

- (1) Make every reasonable effort to acquire expeditiously real property by negotiation;
- (2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property;
- (3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property.
- (4) No owner shall be required to surrender possession of real property before the agency concerned pays the agreed price.
- ...
- (8) If any interest in real property is to be acquired by eminent domain, the head of the federal agency concerned shall institute formal condemnation proceedings. No Federal agency head shall intentionally make it necessary for an owner to initiate legal proceeding to prove the fact of the taking of his real property.

42 U.S.C. § 4651 (1-4), (8); *see also* 49 C.F.R. § 24.102.

The Fifth Amendment of the U.S. Constitution states that "private property shall not be taken without payment of just compensation" and that "no person shall be deprived of life, liberty, or property without due process of the law." These constitutional rights form the basis of the URA's protections for property owners. For the purposes of determining the just compensation to be paid for any building, structure or other improvement required, the building, structure or improvement shall be deemed to be part of the real property to be acquired, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is greater, shall be paid to the tenant therefore. 42 U.S.C. § 4652(b)(1). Additional expenses to be paid to the property owner are: (1) recording fees, transfer taxes, and similar expenses, (2) any penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property, and (3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the vesting of the title. 42 U.S.C. § 4653. Some circumstances will even entitle a property owner to litigation expenses. 42 U.S.C. § 4654.

Under Section 4655 of Title 42, the Federal government shall not approve any grant to, or contract or agreement with, a displacing agency, under which Federal financial assistance will be able to pay all or part of the cost of any program or project which will result in the displacement unless there are satisfactory assurances from the acquiring agency that –

- (1) In acquiring the real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies in section 4651 of this title and the provisions of section 4652 of this title; and
- (2) Property owners will be paid or reimbursed for necessary expenses as specified in section 4653 and 4654 of this title.

42 U.S.C. § 4655. The Port and City all qualify as a “displacing agencies” under the URA as State agencies carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person. 42 U.S.C. § 4601(11). The following steps represent the general process an agency must follow under the URA when acquiring property under threat of eminent domain:

- Notify owner of the agency's intentions to acquire the property and their protections under the URA.
- Appraise the property and invite the owner to accompany the appraiser.
- Review the appraisal.
- Establish just compensation for the property.
- Provide owner with written offer and summary statement for property to be acquired.
- Negotiate with owner for the purchase of property.
- If negotiations are successful, complete the sale and reimburse property owner for related incidental expenses.
- If negotiations are unsuccessful, consider an administrative settlement to complete the sale.
- If negotiations are still unsuccessful, the agency should acquire the property through use of condemnation.

49 CFR 24.102 (c), (d), (e), (f), (i), (l).

In addition to the Federal URA, Chapter 21 of the Texas Property Code also provides certain protections and relocation assistance for displaced persons who must relocate as the result of eminent domain, code enforcement, rehabilitation, or a demolition program. *See* TEX. PROP. CODE §§ 21.0111 (information disclosures), 21.0112 (landowner’s bill of rights statement), 21.0113 (bona fide offer), 21.043 (moving expenses), 21.046 (relocation assistance program).

## **B. Recipients Must Comply with Title VI and Any Related Implementing Regulations**

Title VI prohibits the Port and City receiving Federal financial assistance from engaging in activities that subject individuals to discrimination on the basis of race, color or national origin. Specifically, it provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. The acceptance of federal funds in itself creates an obligation on the part of the recipient to comply with Title VI and the Federal agencies’ implementing regulations.

## **1. Department of Defense**

DOD regulations implementing Title VI state that “[n]o person in the United States shall, on the grounds of race, color or national origin be excluded from participation in, be denied the benefits or, or otherwise be subject to discrimination under, any program to which this (part) applies.” 32 C.F.R. § 195.4(a). These regulations also include the following prohibitions of specific discriminatory acts by recipients of federal funds:

- (i) Deny a person any service, financial aid, or other benefit provided under the program;
- (ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;
- (iii) In determining the site or location of facilities, a recipient may not make selections with the purpose of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this part applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.
- (iv) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;
- (iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;
- (vi) Treat a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program; or
- (vii) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

30 C.F.R. § 195.4(b)(i)-(vii).

## **2. Department of Transportation**

DOT regulations implementing Title VI state that “[n]o person in the United States shall, on the grounds of race, color or national origin be excluded from participation in, be denied the benefits or, or otherwise be subject to discrimination under, any program to which this part applies.” 49 C.F.R. § 21.5(a). These regulations also include the following prohibitions of specific discriminatory acts by recipients of federal funds:

- (i) Deny a person any service, financial aid, or other benefit provided under the program;
- (ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program; or

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

49 C.F.R. § 21.5(b)(i)-(vi).

### **3. Department of Homeland Security**

Department of Homeland Security regulations implementing Title VI also state that “[n]o person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving DHS assistance on the basis of race, color, national origin[.]” 21 C.F.R. § 21.5(a). These regulations also provide a non-exclusive list of specific, prohibited discriminatory acts:

(i) Deny a person any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program; or

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

6 C.F.R. § 21.5 (b)(1)(i)-(vi).

### **4. Department of Housing and Urban Development**

HUD regulations implementing Title VI state that “[n]o person in the United States shall, on the grounds of race, color or national origin be excluded from participation in, be denied the



benefits or, or otherwise be subject to discrimination under, any program to which this part applies.” 24 C.F.R. § 1.4(a). These regulations also include the following prohibitions of specific discriminatory acts by recipients of federal funds:

- (i) Deny a person any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;
- (ii) Provide any housing, accommodations, facilities, services, financial aid, or other benefits to a person which are different, or are provided in a different manner, from those provided to others under the program or activity;
- (iii) Subject a person to segregation or separate treatment in any matter related to his receipt of housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity;
- (iv) Restrict a person in any way in access to such housing, accommodations, facilities, services, financial aid, or other benefits, or in the enjoyment of any advantage or privilege enjoyed by others in connection with such housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity; or
- (v) Treat a person differently from others in determining whether he satisfies any occupancy, admission, enrollment, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;

24 C.F.R. § 1.4(b)(i-v).

Further, each of the implementing regulations governing DOD, DOT, DHS, and HUD make clear that discrimination on the basis of race is a violation of Title VI whether it is the purpose of the decision or its effect. 32 C.F.R. § 195.4(b)(2); 49 C.F.R. § 21.5(d); 6 C.F.R. § 21.5(d); 24 C.F.R. § 1.4(b)(3).

## **V. VIOLATIONS OF TITLE VI**

### **A. Discriminatory Acts**

For more than 10 years, the Port and City have intentionally engaged in conduct devoid of its federal responsibilities and adherence to the law. Specifically, the Port has sought to acquire East End properties with the threat of condemnation as its hammer to force acquiescence of the East End property owners. The Port has provided inadequate compensation, no appraisals, relocation assistance, or advisory services. These actions preyed upon individuals in the East End who were predominately minorities in a low income community, many of whom had little proficiency in English. As detailed below, the Port took advantage of this community by failing to follow federal and state regulations in addition to violating constitutional and civil rights protections owed to this more vulnerable population.

To complete its proposed expansion project, the Port must acquire the land in the East End of Freeport. From the outset of the FHCIP, the Port has had direct notice from Mr. Timothy J. Nelson, the Chief of the Real Estate Division for the Galveston District of the USACE that the Port needed to

comply with all of the provisions of P.L. 91-646, the Federal Relocation Assistance Law.<sup>25</sup> Through the actions described below, the Port and City have furthered and facilitated the Port's expansion efforts into the East End of Freeport for economic benefit. None of these State agencies have acted to protect the residents of Freeport's East End from being displaced due to the Port's expansion efforts and there has been no effort to afford these residents or businesses of the East End the protection that they are entitled to under the Fifth Amendment to the U.S. Constitution or the URA as displaced persons or businesses.

In addition to multiple Title VI violations related to the port expansion process outlined below, Section 1983 of Title 42 of the United States Code provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983.

The Port and the City have had some tension over the growth plans for the City and the Port. At City Council Meetings dating back to August 2006, discussions over expanding the City's limits included comments from Freeport's then Mayor Phillips that the City did not plan to move north toward the Brazos River Harbor Navigation District.<sup>26</sup> This conflict over expansion plans played itself out in the Texas legislature which enacted a statute forcing the City to give back to the Port the land that the City had annexed by eminent domain for an economic development project for a downtown marina. See 10 TEX. GOV'T CODE § 2206.001. As a result, the Port remains one of the largest property holders in the City of Freeport, and in the past several years, the Port has been particularly focused on acquiring property near the Port in the East End of Freeport. In the response to open records requests from the undersigned counsel, the City denies having been engaged in any acquisition of properties for the Port despite having transferred at least 8 properties to the Port located in the East End of Freeport in the last 12 years.

Port Freeport began aggressively accumulating East End properties back in 2008. In February 2016, Port Freeport Director of Engineering Jason Hull freely admitted to local newspaper that the Port owned 179 of the 259 platted lots from Fifth to Eighth Streets and 198 of the 554 platted lots from Eighth to Second Streets.<sup>27</sup> Hull went on the record with one local reporter to state that "[t]he homes that remain are either residential or rental houses; there are just a handful of vacant homes."<sup>28</sup> Importantly, Mr. Hull was the direct recipient of a letter from Mr. Timothy J. Nelson, the Chief of the Real Estate Division for the Galveston District of the USACE.<sup>29</sup> In that letter, the USACE specifically warned Mr. Hull and put the Port on notice that Port's acquisition of land for the port expansion, even prior to the execution of Project Partnership Agreement (PPA) with the Federal Government, still had to comply with all of the provisions of P.L. 91-646, the Federal

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<sup>25</sup> Exhibit D to Draft EIS (2012)

(<http://www.swg.usace.army.mil/LinkClick.aspx?fileticket=Os9GFkdqBDY%3d&portalid=26>)

<sup>26</sup> Meeting of City of Freeport City Council, August 7, 2006, at 5.

<sup>27</sup> Erinn Callahan, *East End Game: Freeport East Enders reluctant to relocate*, The Facts (Feb. 1, 2016).

<sup>28</sup> *Id.*

<sup>29</sup> Exhibit D to Draft EIS for Port Freeport at 26 (2012)

(<http://www.swg.usace.army.mil/LinkClick.aspx?fileticket=Os9GFkdqBDY%3d&portalid=26>)

Relocation Assistance Law.<sup>30</sup> The same letter advised that “records should be kept” by the Port “regarding purchase price and real estate administrative expenses such as title evidence, surveys and appraisal fees in order that the Port receive credit in the event of Federal Authorization.”<sup>31</sup> Unfortunately, the Port has never complied with this guidance.

Port Freeport has coupled its long-term desire to buy up the East End for the expansion of the Port with its concurrent decision to ignore its duty to comply with the URA. These actions constitute intentional discrimination against the East End residents of Freeport in violation of the laws of the United States. By ignoring the mandatory provisions of the URA that protect displaced persons and business, the Port has acted illegally to acquire significant property in Freeport’s East End to aid in its port expansion projects, particularly the Velasco container terminal expansion, which will service privately owned shipping interests utilizing Port Freeport. Operating as a landlord, Port Freeport intends to receive rental payments from private interests like Dow, Chevron, and Phillips 66 in exchange the leasing of this unlawfully-acquired property.

**1. Port Freeport’s failed attempts to circumvent the Uniform Relocation Act (URA) do not absolve its obligations thereto.**

Although the Port may claim to have found “willing” sellers in the East End of Freeport, the Port’s acquisitions must be classified as involuntary under the URA. Because of the accompanying threats of eminent domain with its acquisition offers, the requirements for real property acquisitions for federal funded projects under Subpart B of 49 C.F.R. 24 apply. Under Section 24.102(h), an agency must not take any coercive action in order to induce an agreement on the price to be paid for the property. 49 C.F.R. §24.102(h). There are additional reasons the transaction is not considered voluntary under federal regulations. First, Port Freeport has identified a specific site in the East End as its “expansion area” and the project as outlined on the Port’s PowerPoint slides above will take place within specific time limits. 49 C.F.R. §24.101(b)(1)(i)-(ii). Second, Port Freeport has not provided the owner with the market value of the property. 49 C.F.R. §24.101(b)(1)(iv). Third, Port Freeport has not informed the owner in writing that the property will not be acquired, through condemnation, if negotiations do not reach an amicable agreement. 49 C.F.R. §24.101(a)(1); §24.101(b)(1)(iii). The Port’s messaging to East End Residents is quite the opposite: threats of condemnation and eminent domain abound. Because of its intentional violation of these regulations, there are multiple ways by which the Port is intentionally thwarting the Fifth Amendment and the URA through conducting involuntarily acquisitions of East End properties in a manner that is rapidly displacing a low income, community of color from the East End of Freeport:

**a. Threats of Eminent Domain Takings Without Following Eminent Domain Procedures**

Port Freeport has registered with the Texas Comptroller’s Office as an entity having eminent domain authority since August 1971 for navigation related projects or the construction of shipping terminals or facilities. TEX. WATER CODE § 62.105. Although it has this power, it has not exercised it with respect to its port expansion plans in the East End of Freeport. Instead, the Port carefully crafts its offer letters to East End residents for the acquisition of their property to resemble an eminent domain offer letter, enclosing a copy of the Landowner’s Bill of Rights and referencing condemnation statutes. These offer letters trigger the Port’s obligation to comply with required notice and appraisal provisions of the URA or Texas law. 42 U.S.C. § 4651(2)-(3); 49 CFR

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

24.102(b); TEX. PROP. CODE § 21.0111- 113. However, the procedure itself does not meet required elements under Texas condemnation law for eminent domain. *See* TEX. PROP. CODE § 21.043.

Dianna Kile, who is the Director of External/ Government Affairs for Port Freeport, has been the chief negotiator for the Port in the land acquisitions since 2009. To date, she has made threats of eminent domain to every complainant represented by the undersigned counsel. She will tell residents that the Port is not interested in the improvements on their property; the Port only wants the dirt. Complainants consistently report that Ms. Kile is forceful and condescending in her negotiating tactics to residents. She reports to Port Commissioners regularly on her work “on acquiring East End property.”<sup>32</sup>

Ms. Kile’s letters sent to East End owners dating back to 2010 made a straightforward offer to buy vacant lots for mere appraisal district value. On or about January 14, 2016, the Port’s Executive Board approved the recommended plan to “initiate more aggressive offer-to-purchase stance and deliver formal offer letters as required as part of the ultimate emanate (sic) domain proceedings.” Thus, beginning in 2016, the offer letters still seek to acquire vacant land for a low price, somewhat higher than the appraised value for tax purposes, but contain new language. These letters now mention that purchase will be for “public use of expanding the Port including a landowner’s bill of rights.” The specific “public use” described in her 2016 letter was for “leasing land and warehouse space to third parties.” Further, included in many of the Port’s offer letters is a valuation of the improved property that takes into account the cost to demolish it, meaning the Port states that it is willing to cover the cost of demolishing the property as part of the “value” being given, but not actually paid, to the property owner for the property. Here’s an example of the language used by the Port to suggest that it is offering an owner more than actually being paid:

At this time, the Port is offering to pay \$14,000 in consideration for the purchase of the property which currently contains a currently uninhabitable structure, conditioned upon clear title. Additionally, the Port is willing to bear all cost associated with the removal of the structure existing on the property as well as the abatement of any asbestos contain in that structure. Cost associated with demolition and asbestos removal average \$16,000, for a structure of this size, age and type, creating a combine value of \$30,000 associated with the Port’s purchase offer.

Thus, the “combined value” of the Port’s offer appears to be more, but the Port actually deducts its own costs for demolition and asbestos remediation from the purchase price ultimately paid to the owner for the property.

The Port tweaked its offer letters again in 2017, targeting those owners with vacant land and uninhabitable structures in the East End that the owners are unable to repair because the City will not issue them repair permits. Now the letters to those owning existing structures in the East End are told that the Port’s purchase of their property is for “the public use of constructing houses for the relocation of certain residents from the East End.” In contrast, the letter sent to those owning vacant lots is devoid of any public use language. However, all enclose a landowner’s bill of rights,<sup>33</sup> a documented mandated by Texas to be sent with any eminent domain purchase. TEX. GOV’T. CODE § 402.031.

In addition to the insufficient disclosures and misrepresentations of value made in the Port’s offer letters she authors, East End residents also report that Ms. Kile and others from the Port

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<sup>32</sup> Port Freeport Meeting Minutes, May 26, 2016.

<sup>33</sup> [https://texasattorneygeneral.gov/files/agency/landowners\\_billofrights.pdf](https://texasattorneygeneral.gov/files/agency/landowners_billofrights.pdf)

intentionally mislead, make threats, or utilize intimidation when negotiating with residents who own property in the East End. For example:

- The Port will sometimes communicate to residents that there are liens on their property when there are not.
- The Port has told residents that they will just take the property if residents aren't amenable to selling.
- The Port has told multiple East End residents that "you have to go" because the "Port has to have its property."

Further, the Port has targeted elderly residents in the East End to acquire their property. Similarly, the Port has targeted Spanish-speaking residents with limited English proficiency in the East End to acquire their property without providing documentation in their native language.

Concerned residents from the East End have appeared at Port Freeport's meetings to make public comments concerning the Port's unlawful approach to its "East End Project".<sup>34</sup> On July 12, 2016, Maria Kouches addressed the Board on behalf of her Aunt, Mrs. Perez, who lives at 427 East Broad. She stated that by the time Port Freeport added her street to the properties to purchase there were no lots left on 9<sup>th</sup> Street to build her aunt a new house. Her aunt lives on social security, is over 80 years old and had lived in the East End for 60 years. Her aunt owned her house, having bought it herself. She asked that Port Freeport build a house on another piece of land, either one that the Port owns or on property that she owns in Clute that her parents left her. Another East End resident, Arnold Damain, asked the Port for assistance with moving expenses to his new "swap" house on 9<sup>th</sup> Street.<sup>35</sup> This request suggests that the Port did not provide the necessary relocation assistance to Mr. Damain in violation of the URA.

Ms. Melanie Oldham is a community activist engaged with a Concerned Citizens Groups that has attended several Port Freeport meetings to share the experience of the East End residents. In July 2016, Ms. Oldham reported that another East End resident with multiple sclerosis (MS) who is on a respirator, was approached by real estate agent, Greg Flaniken, who said the Port was using eminent domain, would evict them, and that Mr. Flaniken would pay them more than Port Freeport would.<sup>36</sup> Mr. Flaniken also said that they had 4 weeks to be out of the house. In response, the owner packed up all their possessions, put them in storage, and moved to a rental house in Clute. Ms. Oldham made several pleas to request that the Port be fair and not threaten the East End residents with eminent domain.

Ms. Oldham has also reported that the East End residents were fed up with the heavy Port truck traffic within the East End neighborhood and asked why the fees for road repairs had not been recovered by the City.<sup>37</sup> At least one Freeport resident addressed the Board on behalf of her parents, Humberto & Victoria Rodriguez regarding the traffic behind E. 5<sup>th</sup> Street as well as the condition of the street.<sup>38</sup>

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<sup>34</sup> Port Freeport Meeting Minutes, July 12, 2016.

<sup>35</sup> Port Freeport Meeting Minutes, August 25, 2016.

<sup>36</sup> Port Freeport Meeting Minutes, July 12, 2016.

<sup>37</sup> Port Freeport Meeting Minutes, July 12, 2016.

<sup>38</sup> Port Freeport Meeting Minutes, August 25, 2016.

## **b. No Protections Provided for Property Owners**

The Texas Landowner's Bill of Rights dictates landowners are entitled to receive adequate compensation if their property is taken for public use, and that the entity proposing to buy the property must provide a written appraisal from a certified appraiser detailing that compensation. TEX. PROP. CODE §§ 21.011-21.012. The Port, however, continues to make below market offers to East End residents without providing a supporting, disclosed appraisal and then does not provide the seller relocation assistance as required by the URA. 42 U.S.C. § 4625. For example, the Port has made rock-bottom offers for these properties without disclosing the independent appraisal to the homeowner or allowing the property owner to participate in the appraisal process. 42 U.S.C. § 4651(3); 49 C.F.R. § 24.102(c)(1). Even if the Port's most generous offers could be considered market value, the Port still fails to provide an appraisal as proof of fair compensation and has not paid relocation benefits as required by the URA. Because it "just wants the dirt", the Port has purportedly charged residents, in many instances, to demolish the improvements of the real property as part of the property owner's acquisition costs. In such circumstances, at closing, homeowners end up netting less than their property is worth. Under URA, such valuation must include the value of the improvements. 42 U.S.C. § 4652(b)(1).

The Port at least knew back in 2015 that it needed appraisals, but the Port never provided this information to East End residents if it has it. In 2015, Port Freeport approved the payment of a \$10,000 retainer to Bolton Baer & White, LLC, who are state certified general real estate appraisers in the Woodlands, Texas, to perform "condemnation appraisals to be addressed later."<sup>39</sup> In unanimously approving this retention, the Port commission commented that "all information and data can be gathered now and can be used later when the appraisals will be done."<sup>40</sup> Other Port meetings have referenced state and federal acquisition guidelines that the Port is purportedly adhering, but again, this information isn't shared with the public or owners of the property to ensure that they are being treated uniformly.<sup>41</sup> Based on records obtained from the Port, it also retained Jones Lang LaSalle, Inc. in Houston, Texas, to perform appraisals on certain East End tracts in 2017 being sold to the Port by the Archdiocese, ranging in values between \$1.50 and \$1.75 per square foot. Yet these appraisals, to the extent they exist, are not provided to the homeowner as required by the URA. Instead, even if an appraisal exists, the Port withholds its valuation information from the prospective seller, leaving the East End resident disadvantaged by not knowing the true value of her property.

## **c. Port is Exceeding its Charter by Contracting for Replacement Housing**

The Port's authority as a navigation district allows it the ability to construct improvements for turning, storage, or yacht basins, harbors, or any facilities which may, in the judgment of the Port commission, be necessary or useful in the development and utilization of a waterway project for navigation purposes or in aid of navigation purposes. TEX. WATER CODE § 60.032. Nowhere in the Texas Water Code governing navigation districts does it authorize the Port to build replacement housing for East End residents. However, that's exactly what the Port is doing to force residents out of the East End.

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<sup>39</sup> Port Freeport Meeting Minutes, July 23, 2015.

<sup>40</sup> *Id.*

<sup>41</sup> See, e.g., Port Freeport Meeting Minutes, March 10, 2016 and May 2, 2016.

Publicly, the Port has stated that it “isn’t forcing anyone out, but it is working to buy lots as they come onto the market.”<sup>42</sup> Yet from 2016-2017, the Port has contracted directly with a local home builder, Tegrity Homes to build residential housing for the purposes of being able to “swap” houses with East End residents convinced to relocate in Freeport in exchange for the Port’s acquisition of their property in the East End. Tegrity Homes has been contracted to build these replacement or “swap houses” for East End residents on Ninth St., Avenue G, Avenue T, and elsewhere in Freeport and also in Clute, Texas. Here’s the proof:

- On February 25, 2016, the Port awarded a construction contract for the “New Housing 2016 Project (aka East End Relocation)” to Tegrity Homes in the amount of \$2,927,500.<sup>43</sup> Mr. Jason Hull, the recipient of the earlier letter from the USACE regarding the URA requirements, explained “each house will be a 3 bedroom, 2 bath, 1200 square foot home with all permits included, utility services, solid sod, mailbox, carport, central air/heat, water heater, etc.” All Port commissioners present voted to approve the contract.
- On August 11, 2016, the Port approved Change Order No. 1 with Tegrity Homes in the amount of \$292,750, bringing the revised contract amount to \$3,220,250.<sup>44</sup> The houses are to be built in the 500 block of W. Fifth St. on Port-owned property. All port commissioners present voted to approve the Change Order.
- On August 25, 2016, Ms. Kile reported that the first 8 houses on 9<sup>th</sup> Street had been completed on the inside and that she was currently working on a tour for the media.<sup>45</sup> By September 2016, the 9<sup>th</sup> Street houses were completed.<sup>46</sup>
- On October 3, 2016, the 6 Port Commissioners authorized the Executive Director/CEO Phyllis Saathhoff to execute closing documents for 8 transactions for the contemporaneous sale of 8 East End Properties (on E. 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Streets) and the purchase of 8 W. 9<sup>th</sup> Street Properties.<sup>47</sup> Closings for these 8 properties occurred on November 4, 2016.<sup>48</sup> Twelve more residents were to close on their similar swap properties and be relocated to W. 9<sup>th</sup> Street on November 14, 2016. All 6 Port Commissioners present at the November 10, 2016 meeting authorized those transactions.<sup>49</sup> On December 1, 2016, Ms. Kile reported the Port had closed on 19 out of 20 of the approved transactions.<sup>50</sup>
- On February 23, 2017, the Port approved a Change Order No. 2 with Tegrity Homes in the amount of \$439,125.00 for the New Housing Project 2016. The Minutes explain that the Change Order is to approve the building of three additional houses on the existing contract which will max out the amount that can be added to the contract. Mr. Jason Hull, the recipient of the earlier letter from the USACE regarding the URA requirements, stated that the committee has reviewed the change order

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<sup>42</sup> Erinn Callahan, *Tensions Rise at East End meeting*, The Facts (April 29, 2016).

<sup>43</sup> Port Freeport Meeting Minutes, February 26, 2016.

<sup>44</sup> Port Freeport Meeting Minutes, August 11, 2016.

<sup>45</sup> Port Freeport Meeting Minutes, August 25, 2016.

<sup>46</sup> Port Freeport Meeting Minutes, September 22, 2016.

<sup>47</sup> Port Freeport Meeting Minutes, October 13, 2016.

<sup>48</sup> Port Freeport Meeting Minutes, November 10, 2016.

<sup>49</sup> Port Freeport Meeting Minutes, November 10, 2016.

<sup>50</sup> Port Freeport Meeting Minutes, December 1, 2016.

and recommends approval. All Port commissioners present voted to approve the Change Order.

- On March 23, 2017, the Port Commissioners approved a second contract with Tegrity Homes for the New Housing Project 2017 in an amount not to exceed \$2,297,500.<sup>51</sup> The Contract will cover 20 homes for \$146,375 per home. At the same meeting, the 6 Port Commissioners authorized Executive Director/CEO Phyllis Saathoff to execute closing documents for 2 swap transactions: (1) 515 E. Broad Street, Freeport, TX (East End Property) and 523 W. 5th Street, Freeport, TX and (2) 427 E. Broad Street, Freeport, TX (East End Property) and 528 Montgomery St., Clute, TX (land owned by East End resident, house contracted by Port Freeport).<sup>52</sup>
- In April 2017, the Port approved a Purchase Contract in the amount of \$85,000.00 for property located at North Avenue G and North Avenue T. Ms. Saathoff, the CEO of the Port, stated this contract is for the purchase of seventeen lots that will be used to build future swap houses for East End residents willing to enter an agreement. All 6 Port Commissioners present consented to this transaction.
- By late April 2017, Ms. Kile reported to the Port Commissioners that the last person of “the first phase of the East End project” has moved into her new house.<sup>53</sup>

These housing “swaps” promised to relocate East End residents to new housing in a different area of town; however, the swap provided has turned out to be much less desirable than what the East End residents may have bargained. The majority of the housing provided by the Port is a 3 bedroom, 1 bathroom home with rooms approximately 10’x10’ for a total of 1,200 to 1,400 square feet built on a subdivided lot that is shared with four other homes. In agreeing to the exchange, residents were promised an attached garage with these houses, but most ended up with a mere carport. Correspondence obtained from the Port shows that when the residents called the City to complain about the lack of the garage, Ms. Kile discussed a possible 8x10 storage shed accommodation with the Mayor of Freeport.

Most of the construction for the “swap houses” was completed in 30 days in a low-lying area originally zoned for multi-family housing. Many of these new homes are located in a 100-year flood plain. This new development, ironically called the “Promised Land” by unsatisfied relocated residents, is in a flood zone, requiring the new resident to purchase flood insurance. None was ever needed for East End property, which is the highest area in Freeport and has rarely, if ever, flooded

In each of these transactions, the East End resident had no choice of builder. The Port selects the builder and the replacement property location. The Port has moved several of the remaining residents out by offering to trade them a new “modern” house in Freeport in exchange for their property in the East End. In addition to the issues listed above, another problem with this arrangement is that the taxes on the new house are much greater than the taxes on the old house, and many new residents cannot afford the increased taxes. The City’s former Mayor warned East End residents regarding these swap transactions that “if you’re having to buy something, it’s not swapping.”<sup>54</sup> However, in some of the swap transactions analyzed the East End resident ends up

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<sup>51</sup> Port Freeport Meeting Minutes, March 23, 2017.

<sup>52</sup> Port Freeport Meeting Minutes, March 23, 2017.

<sup>53</sup> Port Freeport Meeting Minutes, April 27, 2017.

<sup>54</sup> Erinn Callahan, *Tensions Rise at East End meeting*, The Facts (April 29, 2016).



paying more for the new property and a new mortgage of \$50,000 when they used to own the home in its entirety.

The “swap” contracts themselves raise additional concerns as they contain provisions that the home purchase is also a “settlement” entered into “to avoid the cost and expense attendant with an eminent domain proceeding.” Yet again, the Port has failed to follow the required eminent domain procedures so that the homeowner is even aware of his or her rights. The “swap” agreement also gives the Port a 5-year right of first refusal if the resident ever decides to sell their newly acquired “swap” house. The contract requires the new owner to offer the “swap house” back to the Port at “fair market value” which the contract fixes at \$50,000. The Port has provided to the undersigned counsel at least 2 contracts containing this provision for the purchase of 427 E. Broad St. and 330 E. Fifth Street.

#### **d. Other Questionable Acquisition Acts by Representatives Controlled by the Port**

Under most federal regulations, a recipient of federal funds, like the Port, must establish safeguards to prohibit employees, officers, and agents from using their position for a purpose that is, or gives the appearance of being, motivated for private gain for themselves or others, particularly those with whom they have family, business or other ties. *See, e.g.*, 24 C.F.R. 570.611. Unfortunately, the Port’s acquisition process has revealed multiple conflicts of interests during its East End Project. First, Port officials have posed as a neutral third party and purchased property from residents, then subsequently conveyed the property to the Port. Second, the Port has asked the City attorney, Wallace Shaw, to represent both the buyer (Port) and the property owner, an East End resident, in the same transaction. Third, real estate brokers acting on behalf of the Port will arrange the sale of the East End residents’ property, receive either part or all of the commission, and then take a second commission on the sale of the “swap property” to the now former East End resident. Two of the repeat brokers working for the Port are Steve Cone and Greg Flaniken, either by purchasing the properties for themselves as “straw buyers” for subsequent sale to the Port or representing the Port in a direct acquisition. On occasion, they disclaimed their contractual agency to City officials to gain access to tax auctions. Fourth, in at least one examined “swap property” transaction, the wife of the real estate broker, Greg Flaniken, who took two commissions on the sale, is the lender to the new property owner of the swap property. Unfortunately, the promissory note payments for the replacement property are beyond the financial means of the new owner, and a Complainant is likely to lose her home completely. Further, law firms for the Port, including the Mauro & Cordoba, PLLC n/k/a Cordoba Law Firm, PLLC and the Girouard Law Firm PC, and Port’s own representatives persist in making direct contact with residents known to be represented by their own counsel. By circumventing established attorney-client relationships, the Port tries to “cut a deal” with residents without involving their attorneys.

#### **e. Environmental Justice Impacts**

By the end of 2015, Port Freeport had approved a bid for the demolition of twelve homes in the East End for \$35,173.<sup>55</sup> In August 2016, the Port approved demolition of the Freeport Inn, which was in an area zoned as residential, as part of the East End Properties 2016 project.<sup>56</sup> Port Freeport has been demolishing multiple residences in the East End that are known to have asbestos without following appropriate procedures for removal. The Port has only obtained permits for asbestos removal for the Freeport Inn 4 residential houses in the East End: 327, 410, and 430 E.

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<sup>55</sup> Port Freeport Meeting Minutes, November 12, 2015.

<sup>56</sup> Port Freeport Meeting Minutes, August 25, 2016.

Broad St. and 223 E. 2<sup>nd</sup> Street.<sup>57</sup> Port Freeport minutes reflect many homes more were known to require asbestos abatement despite not obtaining any permits since 2016.<sup>58</sup> More demolitions are to follow in 2017, but not a single notice for has been filed in 2017.<sup>59</sup>

For all of these reasons, the Port's approach to acquire property unlawfully at below market prices in contravention to the URA and the Fifth Amendment is negating generations of investment and wealth built in this predominantly low income, community of color in the East End of Freeport. The homes in this community will not be passed on to the next generation, but have gone to the Port for prices well below their market value.

## **2. The Supporting Role of the City**

The City will also benefit as taxing authorities from the economic development generated by the Port's interests in Freeport, and have done nothing to protect the citizens from the Port's illegal acquisition of these properties. Specifically, the City have worked expressly against the homeowners of the East End and tipped the scales in favor of the Port's expansion efforts in the following ways:

### **a. Efforts to Devalue East End Properties to Make Acquisition Efforts Easier**

While the City has not exercised its own eminent domain powers for the Port, the City has been helpful to the Port by doing very little development in the East End. For the past 15 years, the City has discouraged and actively impeded requests for constructions and remodeling permits in the East End. After making applications to the City, several complaining East End residents wanting to remodel or "fix up" their East End homes were denied building permits from the City's building department.

In addition, the City has required East End property owners not living at an improved lot in the East End to demolish their house. Specifically, the City has threatened these property owners with demolition and refuses to issue any permits to improve property in the East End. Through concentrated code enforcement efforts in the East End, the City has considered and approved the demolition of several properties in the East End because of poor maintenance. The decrepit condition of these premises largely relates to the resident's inability to improve his property even if the resident was financially able due to the City's restrictions on permits. For example, in February 2015, the City foreclosed on and ordered the demolition of Lot 15, Block 116, Freeport Townsite, 1026 W. 4th St., Tax ID 4200-1163-000 under Resolution No. 2015.02.01.

The City has also passed a number of ordinances in the last 7 years that have hurt low income residents. For example, in May 2014, the Freeport City Council approved City Ordinance No. 2014-2063 declaring it to be a nuisance for and amending Section 91.08 of the Code of Ordinances of said City to provide that *"the owner or agent, tenant or lessee of any premises in the City shall be responsible for maintaining the Front, Back and Side Yards of such premises, including sidewalks,*

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<sup>57</sup> Texas Department of State Health Services, Notification Search Results for Port Freeport as "Facility Owner." (<https://vo.ras.dshs.state.tx.us/datamart/notificationSearchResultAction.do>)

<sup>58</sup> Port Freeport Meeting Minutes, November 12, 2015; Port Freeport Meeting Minutes, August 25, 2016; Port Freeport Meeting Minutes, January 12, 2017 (identifying 19 East End properties slated for demolition containing asbestos). This demolition contract was awarded in early February 2017. See Port Freeport Meeting Minutes, February 9, 2017.

<sup>59</sup> Port Freeport Meeting Minutes, January 12, 2017.

*grass strips and one-half of any alley or unpaved right-of-way adjoining such premises, free and clear of accumulations of grass cutting, yard refuse or clippings and other trash, garbage or litter of any kind, and providing that no person shall sweep into or deposit the same upon or in any street, alley, drainage structure or ditch within the City.”*<sup>60</sup> This ordinance places an undue burden on East End residents who have drainage ditches abutting their property as they now must maintain City property.

In a nutshell, East End taxpayers are paying for city services, but not receiving them. For example, the trucks travelling to the Port’s facilities near the East End destroyed the community roadways. The City has not done any upkeep or maintenance of the infrastructure in the East End since 2008 unless directly related to the Port. In particular, in 2016, there were many East End residents vocally upset about the disrepair of their neighborhood streets because of the heavy use by commercial truck traffic to and from the Port and never repaired by the City.<sup>61</sup> The Residents distrust the City because it allowed the streets to fall into disrepair under the belief that the Port would come in and fix everything.<sup>62</sup>

Depressed property values in the East End assist the Port. Despite Brazoria County Appraisal District valuing most properties in the East End, improved or not, from \$2,800 to \$10,000 per lot, recent comparables from some recent sales to the Port show the property “in the Port’s area of expansion” in the East End<sup>63</sup> is worth far in excess of its assessed value for tax purposes:

<b>Address (Legal Description)</b>	<b>Purchase Price</b>	<b>Date Sale Approved</b>
403 E. Broad St. (Blk 14, Lots 1-2)	\$33/sq. ft. or \$45,000 plus closing costs	12/03/2015 <sup>64</sup>
327 E. Broad St. (Blk 18, Lots 13-14)	\$38/sq. ft. or \$35,000 plus closing costs	12/17/2015 <sup>65</sup>
402 E. Broad St. (Blk 15, Lots 22, 23, 24)	\$47/sq. ft. or \$80,100 At a slightly higher price per square foot because it was “a little larger and better condition than previous homes.”	02/25/2016 <sup>66</sup>
302 E. Broad St. (Blk 17, Lots 23-24)	\$38/sq. ft. or \$70,000 plus standard closing costs	03/10/2016 <sup>67</sup>
223 E. 2nd St. (Blk 30, Lot 6)	\$45/sq. ft. or \$76,200 plus standard closing costs based on the same guidelines	03/10/2016 <sup>68</sup>
211 E. 2nd St. (Blk 30, Lot 3)	\$50/sq. ft. or \$75,000 because of garage, expanded living areas and recent renovations.	05/02/2016 <sup>69</sup>

<sup>60</sup> Meeting of Freeport City Council, May 5, 2014.

<sup>61</sup> Erinn Callahan, *Freeport to Ban Truck Traffic on East End*, The Facts (July 13, 2016); Erinn Callahan, *Tensions Rise at East End meeting*, The Facts (April 29, 2016).

<sup>62</sup> Erinn Callahan, *Tensions Rise at East End meeting*, The Facts (April 29, 2016).

<sup>63</sup> Port Freeport Meeting Minutes, December 3, 2015.

<sup>64</sup> Port Freeport Meeting Minutes, December 3, 2015.

<sup>65</sup> Port Freeport Meeting Minutes, December 17, 2015.

<sup>66</sup> Port Freeport Meeting Minutes, February 25, 2016.

<sup>67</sup> Port Freeport Meeting Minutes, March 10, 2016.

<sup>68</sup> Port Freeport Meeting Minutes, March 10, 2016.

<sup>69</sup> Port Freeport Meeting Minutes, May 2, 2016.

<b>Address (Legal Description)</b>	<b>Purchase Price</b>	<b>Date Sale Approved</b>
315 E. Broad St. (Blk 18, Lots 7-8)	\$49/sq. ft. or \$81,950 because the house was slightly larger than 223 E. 2nd St.	05/02/2016 <sup>70</sup>
314 E. Broad St. (Blk 17, Lots 15-20)	\$66/sq. ft. or \$130,000	9/22/2016 <sup>71</sup>
311 E. Broad St. (Blk 18, Lots 5-6)	\$62/sq. ft. or \$62,000 plus standard closing costs, with the exception to any back taxes or curative work under Schedule C of the title commitment, plus a realtor fee of 4.5% going to Greg Flaniken as he began the process with this property prior to terminating his services with the Port	01/12/2017 <sup>72</sup>
526 E. Broad St. (Blk 2, Lots 15-16)	\$45/sq. ft. or \$60,000 with standard closing costs with the exception of any back taxes or curative work under Schedule C of the title commitment	01/12/2017 <sup>73</sup>
310 E. 8th St. (Blk 22, Lot 14)	\$51/sq. ft. or \$65,000 plus all closing costs, including a 4.5% realtor commission	02/23/2017 <sup>74</sup>
East 4 <sup>th</sup> St. (Blk 19, Lots 1-15)	\$105,000 (church); land purchased for approximately \$2/sq. ft.	03/23/2017 <sup>75</sup>
326 E. Broad St. (Blk 17, Lots 11-12)	\$70/sq. ft. or \$100,000 <sup>76</sup>	04/13/2017 <sup>77</sup>
415 E. 2nd St. (Blk 15, Lot 4)	\$46/sq. ft. or \$70,000	05/10/2017 <sup>78</sup>
302 E. 7th St. (Blk 21, Lot 16)	\$78/sq. ft. or \$70,000	05/10/2017 <sup>79</sup>
403 E. ½ 2nd St. (Blk 15, Lot 1)	Price not specified (swap transaction)	09/14/2017 <sup>80</sup>
330 E. 5th St. (Blk 19, Lot 17)	Price not specified (swap transaction)	09/14/2017 <sup>81</sup>
503 E. Broad St. (Blk 3, Lots 1-2)	\$47/sq. ft. or \$50,000	09/14/2017 <sup>82</sup>
507 E. 2nd St.	\$75/sq. ft. or \$60,000	09/14/2017 <sup>83</sup>

<sup>70</sup> Port Freeport Meeting Minutes, May 2, 2016.

<sup>71</sup> Port Freeport Meeting Minutes, September 22, 2016.

<sup>72</sup> Port Freeport Meeting Minutes, January 12, 2017.

<sup>73</sup> Port Freeport Meeting Minutes, January 12, 2017.

<sup>74</sup> Port Freeport Meeting Minutes, February 23, 2017.

<sup>75</sup> Port Freeport Meeting Minutes, March 23, 2017.

<sup>76</sup> Six months earlier, the property owner, Abraham Balbas, had complained to City Council of Freeport that Port Freeport had not offered him enough money for his property. Freeport City Council Meeting Minutes, November 7, 2016.

<sup>77</sup> Port Freeport Meeting Minutes, April 13, 2017.

<sup>78</sup> Port Freeport Meeting Minutes, May 10, 2017.

<sup>79</sup> Port Freeport Meeting Minutes, May 10, 2017.

<sup>80</sup> Port Freeport Meeting Minutes, September 14, 2017.

<sup>81</sup> Port Freeport Meeting Minutes, September 14, 2017.

<sup>82</sup> Port Freeport Meeting Minutes, September 14, 2017.

Address (Legal Description)	Purchase Price	Date Sale Approved
(Blk 2, Lot 2)		
528 E. 2nd St. (Blk 1, Lot 8)	\$59/ sq. ft. or \$40,000	09/14/2017 <sup>84</sup>

Moreover, the Port has produced communications between the Port and its broker and agent, Greg Flaniken, suggesting the proposed purchase value for East End property (specifically 311 E. Broad St.) is \$39/sq. ft., but that it would fetch 15-20 times more on the open market. This correspondence helps illustrate that the Port is offering a haphazardly determined value for the properties, not market value based on any appraisal as required by the URA, particularly given the understood value of these properties to the Port itself given its acquisition plans.

#### **b. The Plan to Foreclose and Transfer to the Port**

In the past the City Council of Freeport has expressed the desire to save the East End, but more recently the City has just decided to hand over the property to the Port. Since 2005, the City has transferred at least eight properties in the East End to the Port. At least two of these property transfers involved delinquent property tax foreclosures by Brazoria County.

Brazoria County has been expeditiously foreclosing on properties in the East End of Freeport, not allowing residents an opportunity to correct delinquent taxes. In some instances, residents have been told by the County that their property taxes are already paid, so they do not pay them. Even on request, residents are not given any verification by the County that the taxes were actually paid. Port Freeport has purchased at least one property on East 6<sup>th</sup> St. through this foreclosure process.<sup>85</sup>

At a February 25, 2016 meeting, the Port Commission approved an Interlocal Agreement between Port Freeport and the City of Freeport.<sup>86</sup> The Port Commissioners approved the agreement contingent on the City providing a title policy of the East End City Park, a city park in the East End of approximately 3.49 acres. At this time, we have been unable to secure said agreement through pending open records requests. But the evidence of its existence certainly suggests that the City of Freeport and Port Freeport are in lock-step as to the Port's unlawful acquisition efforts in the East End. Port Freeport has also referenced in its minutes about an issue with the "East End Park" and hired a consultant to engage with the City on this issue.<sup>87</sup> It is unclear whether citizens will have any participation in this process. The Mayor has also said before that the CEO of the Port has come to the City and asked for the streets, and she said, "No, we're (City) not giving you our streets."<sup>88</sup> Under new leadership, it now appears that the City's streets and parks may be for sale.

In a city strapped for housing, the East End is prime real estate property. However, the prospect of the Port's acquisition has deterred many owners from building. Eric Hayes, a local real estate developer, has been quoted for saying: "If I knew they weren't going to destroy it, I'd build

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<sup>83</sup> Port Freeport Meeting Minutes, September 14, 2017.

<sup>84</sup> Port Freeport Meeting Minutes, September 14, 2017.

<sup>85</sup> Port Freeport, Meeting Minutes, February 23, 2017.

<sup>86</sup> Port Freeport Meeting Minutes, February 25, 2016.

<sup>87</sup> Port Freeport Meeting Minutes, January 26, 2017.

<sup>88</sup> Erinn Callahan, *Tensions Rise at East End meeting*, The Facts (April 29, 2016).

houses down there." He continues about the quality of the East End property: "That's high land, so it doesn't flood, and there are no water issues."

Dianna Kile often mentions during her "swap" negotiations that if an East End resident prefers not to live in one of the several lots available on 9<sup>th</sup> Street, then the Mayor of Freeport has other City-owned lots to consider outside of the East End.

Complainants report that the cheapest rental home in Freeport is \$1,300 per month with a \$1,300 deposit. Generally, due to a steady influx of people moving to Freeport for port-related work, there is a lack of affordable housing in the area for low income East End residents forced to relocate. As one resident has commented: "The City doesn't have much land for housing; we don't need to give it away [to the Port]."

## V. RELIEF

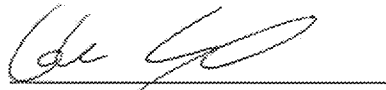
Complainants request that Office of Civil Rights for DOJ, DOD, HUD, and DOT and the Office of Civil Rights and Civil Liberties for DHS accept this complaint concerning whether the City of Freeport and Port Freeport have violated Title VI of the Civil Rights Act and its implementing regulations, and indeed whether they continue to violate Title VI of the Civil Rights Act through the acquisition of East End property without complying with the Fifth Amendment, the URA or related Texas law.

Complainants further request that the City and the Port be brought into compliance by: (a) reviewing all purchase contracts for East End property and analyzing whether property owners received just compensation and all relocation benefits under URA and Texas law; (b) reviewing any and all "swap" transactions involving East End residents for housing built or acquired by the Port and analyzing whether these properties constitute comparable replacement housing as required under URA and Texas law, and (c) conditioning all future grants and awards from DOT, DOD, DHS, and HUD to the City and the Port on adequate assurances that the actions of all recipients will strictly comply with Title VI, NEPA, URA, as well as all other state and federal guidelines as detailed above.

Sincerely,



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